STATE OF NEW YORK

380

2017-2018 Regular Sessions

IN ASSEMBLY

January 5, 2017

Introduced by M. of A. MOYA -- read once and referred to the Committee on Codes

AN ACT to amend the general business law, in relation to employment agencies; and to amend a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph b of subdivision 2 of section 173 of the general business law, as amended by a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, is amended to read as follows:

b. The application for a license shall be accompanied by samples or accurate facsimiles of each and every form which the applicant for a license will require applicants for employment to execute, and such forms must be approved by the commissioner before a license may be issued. The commissioner shall approve any such forms which fairly and clearly represent contractual terms and conditions between the proposed employment agency and applicants for employment, such as are permitted by this article. [~~The commissioner shall determine in his or her discretion, which languages to provide, in addition to English, based on the size of the state population that speaks each language and any other factor the commissioner deems relevant. All forms shall be made available to employment agencies in such a manner as determined by the commissioner.~~] **The commissioner shall make all forms required pursuant to this article available to employment agencies in languages other than English, including any other language that the commissioner determines, in his or her discretion, based on the size of the New York population that speaks each language and any other factor that the commissioner**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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deems relevant. An employment agency shall not be penalized for errors or omissions in the non-English portions of any forms provided by the commissioner.

§ 2. Subdivision 1 of section 174 of the general business law, as amended by a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, is amended to read as follows:

1. Upon the receipt of an application for a license, the commissioner shall cause the name and address of the applicant, the name under which the employment agency is to be conducted, and the street and number of the place where the agency is to be conducted, to be posted on the commissioner's website, as well as in a conspicuous place in his public office. Such agency shall be used exclusively as an employment agency and for no other purpose, except as hereinafter provided. The commissioner shall investigate or cause to be investigated the character and responsibility of the applicant and agency manager and shall examine or cause to be examined the premises designated in such application as the place in which it is proposed to conduct such agency.

The commissioner shall require all applicants for licenses and agency managers to be fingerprinted. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. The criminal history information, if any, received by the [~~department of labor~~] commissioner shall be considered in accordance with the provisions of article twenty-three-A of the correction law and subdivisions fifteen and sixteen of section two hundred ninety-six of the executive law. A reasonable time before making a determination on the application pursuant to this subdivision, the [~~department~~] commissioner shall provide the applicant with a copy of the applicant's criminal history information, if any. Where such criminal history information is provided, the [~~department~~] commissioner shall also provide a copy of article twenty-three-A of the correction law, and inform such applicant of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services.

§ 3. Section 181 of the general business law, as amended by a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, is amended to read as follows:

§ 181. Contracts, statements of terms and conditions, and receipts. It shall be the duty of every employment agency to give to each applicant for employment:

1. A true copy of every contract executed between such agency and such applicant, which shall have printed on it or attached to it a statement setting forth in a clear and concise manner the provisions of sections one hundred eighty-five, and one hundred eighty-six of this article.

2. (a) [~~Each contract~~] For class "C" theatrical employment: information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee for the applicant based on such anticipated wages or compensation, whether such employment is permanent or temporary, the name and address of the person authorizing the hiring of such applicant, and the cost of transportation

if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in ten-point type signed by the job applicant.

(b) for all other employment, including class "A" and "A-1" employment, each contract shall include, but not be limited to, the following: information as to the name and address of the person to whom the applicant is to apply for such employment, the name, the address, the mailing address, and the telephone number of the employer; the address or addresses of employment, the kind of service to be performed; the anticipated rate of wages or compensation; the anticipated hours of work per day and number of days to be worked per week; the agency's fee for the applicant based on such anticipated wages or compensation; any provision to the employee, and costs associated with that provision including housing, health insurance, healthcare, sick leave, holidays and retirement benefits; whether such employment is permanent or temporary, the anticipated period of employment, the name and address of the person authorizing the hiring of such applicant; and the cost of transportation if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in ten-point type signed by the job applicant.

[~~(b)~~] 3. (a) This paragraph shall apply to all classes of employment except for class "C" theatrical employment. The employment agency shall provide to each applicant, a separate document accompanying each contract summarizing the terms and conditions of the contract [~~in commonly understood terms~~]. This document shall be entitled "terms and conditions" and shall include the language that the document is not a contract and that such document is not legally binding. [~~The commissioner shall promulgate rules and regulations determining what information shall be included in the terms and conditions provided by an agency to an applicant~~] The terms and conditions shall be provided in plain and commonly understood terms and language which shall aid the job applicant in understanding the transaction and such document shall limit the use of technical terms whenever possible.

(b) The terms and conditions shall conform to any templates established by the commissioner and be made available to employment agencies in such manner as determined by the commissioner. In developing such templates, the commissioner shall afford the public an opportunity to submit comments on such templates.

(c) The commissioner may promulgate rules and regulations necessary to carry out the provisions of this section.

[~~(c) When a job applicant identifies as his or her primary language a language for which a template is not available from the commissioner, the employment agency shall comply with this subdivision by providing that employee an English-language statement.~~]

(d) An employment agency shall not be penalized for errors or omissions in the non-English portions of any [~~notice~~] templates provided by the commissioner.

[~~3.~~] 4. A receipt for any fee, deposit, consideration, or payment which such agency receives from such applicant, which shall have printed or written on it the name of the applicant, the name and address of the employment agency, the date and amount of such fee, deposit, consideration or payment or portion thereof for which the receipt is given, the

purpose for which it was paid, and the signature of the person receiving such payment. If the applicant for employment has been recruited from outside the state for domestic or household employment the receipt shall have printed on it, or attached to it, a copy of section one hundred eighty-four of this article. The receipt shall also include, immediately above the place for signature of the person receiving payment, set off in a box and printed in bold capital letters, the following statement: "An employment agency may not charge you, the job applicant, a fee before referring you to a job that you accept. If you pay a fee before accepting a job or pay a fee that otherwise violates the law, you may demand a refund, which shall be repaid within seven days".

[~~4.~~] **5.** The completed original or duplicate-original copy of each such contract, statement of terms and conditions, receipts, and any other documents given to the applicant shall be retained by every employment agency for three years following the date on which the contract is executed or the payment is made, and shall be made available for inspection by the commissioner or his duly authorized agent or inspector, upon his request. Notwithstanding the other provisions of such contracts, the monetary consideration to be paid by the applicant shall not exceed the fee ceiling provided in subdivision eight of section one hundred eighty-five of this article.

§ 4. Subdivisions 2, 4 and 5 of section 189 of the general business law, as amended by a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, are amended to read as follows:

2. To effectuate the purposes of this article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law, the commissioner or any duly authorized agent or inspector designated by such commissioner, shall have authority to inspect the premises, registers, contract forms, completed contracts, statements of terms and conditions, receipt books, application forms, referral forms, reference forms, reference reports and financial records of fees charged and refunds made of each employment agency, and any other record that the employment agency is required to maintain pursuant to this article, which are essential to the operation of such agency, and of each applicant for an employment agency license, as frequently as necessary to ensure compliance with this article and such sections. In no event shall any employment agency be inspected less frequently than once every eighteen months. Inspections may consist of in-person visits to employment agencies **or the review of records as described in this subdivision or both**. The commissioner shall also have authority to subpoena records and witnesses or otherwise to conduct investigations of any employer or other person where he or she has reasonable grounds for believing that such employer or person is violating or has conspired or is conspiring with an employment agency to violate this article or such sections.

4. Complaints against any such licensed or unlicensed person may be made orally or in writing to the commissioner, or be sent in an affidavit form without appearing in person, and may be made by recognized employment agencies, trade associations, or others. The commissioner may hold a hearing on a complaint with the powers provided by section one hundred seventy-four of this article. If a hearing is held, reasonable notice thereof, not less than five days, shall be given in writing to said person by serving upon the person either personally, by mail, or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and the hearing shall

commence before the commissioner with reasonable speed but in no event later than two weeks from the date of the filing of the complaint. The commissioner when investigating any matters pertaining to the granting, issuing, transferring, renewing, revoking, suspending or cancelling of any license is authorized in his discretion to take such testimony as may be necessary on which to base official action. When taking such testimony he may subpoena witnesses and also direct the production before him of necessary and material books and papers. A daily calendar of all hearings shall be kept by the commissioner and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The commissioner shall render his decision within thirty days from the time the matter is finally submitted to him. The commissioner shall keep a record of all such complaints and hearings. The office of new Americans shall, pursuant to section ninety-four-b of the executive law, receive complaints[~~, attempt to mediate such complaints,~~] and where appropriate refer such complaints to the attorney general or other federal, state or local agency authorized by law to take action on such complaint.

5. Upon a finding that the licensed person or his agent, employee or anyone acting on his behalf is guilty of violating any provision of this article or is not a person of good character and responsibility, the commissioner may suspend or revoke the license of such licensed person. Any employment agency found to have violated any provision of this article shall be subject, for the first offense, to a civil penalty not to exceed one thousand dollars per violation, and, for each subsequent offense within six years of such previous offense, to a civil penalty, not to exceed five thousand dollars per violation. [~~When~~] **Upon notice of violation of this article or when** it is determined that there has been a violation of this article by an employment agency, the commissioner [~~shall~~] **may** provide the employment agency with a specific time period for such employment agency to cure or correct such violation or take other ameliorative action as directed by the commissioner, the successful completion of which shall prevent the imposition of penalties on the employment agency for such violation. Whenever such commissioner shall suspend or revoke the license of any employment agency, or shall levy a fine against any agency, said determination shall be subject to judicial review in proceedings brought pursuant to article seventy-eight of the civil practice law and rules. Whenever an employment agency's license is revoked, another license or agency manager permit shall not be issued within three years from the date of such revocation to said licensed person or his agency manager or to any person with whom the licensee has been associated in the business of furnishing employment or engagements. Deputy commissioners, or other officials designated to act on behalf of the commissioner, may conduct hearings and act upon applications for licenses, and revoke or suspend such licenses, or levy fines against an employment agency.

§ 5. Section 11 of a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, is amended to read as follows:

§ 11. This act shall take effect immediately**; provided, however, that the amendments to paragraph (b) of subdivision 2 of section 181 of the general business law made by section four of this act shall take effect on the forty-fifth day after it shall have become a law**.

§ 6. This act shall take effect immediately; provided however that sections one, two, three, and four of this act shall take effect on the same date and in the same manner as a chapter of the laws of 2016,

amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, takes effect.